



Reprinted
February 1, 2006

SENATE BILL No. 383

DIGEST OF SB 383 (Updated January 31, 2006 5:18 pm - DI 103)

Citations Affected: IC 24-4.5.

Synopsis: Motor vehicle title loans. Provides that certain lenders may make loans for which the collateral is title to a motor vehicle. Provides that the interest rate for a motor vehicle title loan may not exceed 22%. Requires a motor vehicle title lender to provide certain warnings to borrowers. Sets forth procedures for: (1) repossessing a motor vehicle if a borrower defaults on a motor vehicle title loan; and (2) redeeming the title to a repossessed motor vehicle. Prohibits certain actions by motor vehicle title lenders and imposes penalties for violations.

Effective: July 1, 2006.

Steele, Nugent, Lewis, Mrvan

January 11, 2006, read first time and referred to Committee on Insurance and Financial Institutions.

January 24, 2006, amended, reported favorably — Do Pass.

January 31, 2006, read second time, amended, ordered engrossed.

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SB 383—LS 6969/DI 103+



Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 383

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.5-8 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2006]:

4 **Chapter 8. Motor Vehicle Title Loans**

5 **Sec. 1. This chapter shall be known and may be cited as the**
6 **Uniform Consumer Credit Code - Motor Vehicle Title Loans.**

7 **Sec. 2. (a) Except as otherwise provided, the provisions of this**
8 **article that apply to consumer loans apply to motor vehicle title**
9 **loans.**

10 **(b) This chapter applies to the following:**

11 **(1) A person who:**

12 **(A) is licensed to make a loan under this article; or**

13 **(B) facilitates, enables, or acts as a conduit for a lender**
14 **who is or may be exempt from licensing under**
15 **IC 24-4.5-3-502, other than an employee of a lender acting**
16 **within the scope of the employee's duties for the lender.**

17 **(2) A bank, savings association, credit union, or other**



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regulated financial institution, other than a financial institution that is specifically exempt regarding limitations on interest rates and fees.

(3) Any person, if the department determines that a transaction to which the person is a party:

(A) is in substance a disguised motor vehicle title loan; or

(B) constitutes an act of subterfuge to avoid the requirements of this chapter.

(c) This chapter does not apply to:

(1) any supervised financial institution;

(2) any supervised lender licensed to do business in the state; or

(3) the employee of a supervised financial institution or a supervised lender while acting within the scope of the employee's duties.

Sec. 3. As used in this chapter, "department" refers to the department of financial institutions.

Sec. 4. As used in this chapter, "month" means a period extending from a given date in one (1) calendar month to the same date in the succeeding calendar month or, if there is no same date in the succeeding calendar month, to the last day of the succeeding calendar month. Unless otherwise indicated, a month is considered to have thirty (30) days.

Sec. 5. As used in this chapter, "motor vehicle" has the meaning set forth in IC 9-13-2-105(a). However, the term does not include a recreational vehicle (as defined in IC 9-13-2-150(a)) or a watercraft (as defined in IC 9-13-2-198.5).

Sec. 6. As used in this chapter, "motor vehicle title lender" means a person that lends money on a pledge secured by the bailment of a motor vehicle title left in possession of the lender.

Sec. 7. As used in this chapter, "motor vehicle title loan" means a loan that is secured by the bailment of a motor vehicle whose unencumbered certificate of title is deposited with a motor vehicle title lender.

Sec. 8. As used in this chapter, "person" means an individual, a firm, an association, a limited liability company, a partnership, a joint stock association, a trust, a corporation, or any other business entity.

Sec. 9. As used in this chapter, "pledge" means an unencumbered certificate of title to a motor vehicle that secures a motor vehicle title loan.

Sec. 10. As used in this chapter, "principal" means the total of

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the net amount paid to or receivable by a borrower.

Sec. 11. As used in this chapter, "unencumbered certificate of title" means a motor vehicle title that does not list a lienholder on the certificate of title and for which the lender holding the motor vehicle title has not applied for and does not intend to apply for a new certificate of title in order to record the lender's security interest.

Sec. 12. A motor vehicle title lender may contract for and impose an interest rate on a motor vehicle title loan. The interest rate may not exceed twenty-two percent (22%) per month. An interest rate imposed under this section is not a fee for purposes of section 13 of this chapter.

Sec. 13. Notwithstanding any other law, the only fee that a motor vehicle title lender may contract for and receive on a motor vehicle title loan is a charge that may not exceed the lien fee charged by the bureau of motor vehicles.

Sec. 14. (a) A motor vehicle title lender shall disclose to a borrower any information required under the Federal Consumer Credit Protection Act.

(b) A motor vehicle title lender shall conspicuously display in the lending area of each of the motor vehicle title lender's business locations and in all loan documents a notice that contains the following statements:

"THIS LOAN IS NOT INTENDED TO MEET LONG TERM FINANCIAL NEEDS.

YOU SHOULD USE THIS LOAN ONLY TO MEET SHORT TERM CASH NEEDS.

YOU WILL BE REQUIRED TO PAY ADDITIONAL INTEREST IF YOU RENEW THIS LOAN RATHER THAN PAY THE DEBT IN FULL WHEN DUE.

THIS LOAN IS A HIGHER INTEREST LOAN. YOU SHOULD CONSIDER WHAT OTHER LOWER COST LOANS MAY BE AVAILABLE TO YOU.

YOU ARE PLACING AT RISK YOUR CONTINUED OWNERSHIP OF THE PERSONAL PROPERTY WHOSE TITLE YOU ARE PLEDGING FOR THIS LOAN.

IF YOU FAIL TO REPAY THE FULL AMOUNT OF THIS LOAN ON OR BEFORE THE END OF THE MATURITY DATE OR RENEWAL OF THE LOAN, THE LENDER MAY TAKE POSSESSION OF THE PROPERTY WHOSE TITLE IS PLEDGED AND SELL THE PROPERTY IN THE MANNER PROVIDED BY LAW.

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1 YOU HAVE A LEGAL RIGHT OF RESCISSION. THIS
 2 MEANS YOU MAY CANCEL YOUR CONTRACT AT NO
 3 COST TO YOU BY RETURNING THE ORIGINAL LOAN
 4 CHECK OR CASH YOU BORROWED BY THE LENDER'S
 5 NEXT BUSINESS DAY AFTER THE DATE OF YOUR
 6 LOAN.

7 IF THE TITLE PLEDGE AGREEMENT IS LOST,
 8 DESTROYED, OR STOLEN, YOU SHOULD
 9 IMMEDIATELY ADVISE THE LENDER IN WRITING.
 10 MOTOR VEHICLE TITLE LOANS ARE REGULATED BY
 11 THE STATE OF INDIANA DEPARTMENT OF
 12 FINANCIAL INSTITUTIONS."

13 (c) The statement described in subsection (b) must be in:

- 14 (1) 14 point bold type in a loan agreement; or
 15 (2) at least one (1) inch bold print in the lending area of a
 16 business location.

17 (d) A motor vehicle title lender shall provide a borrower with a
 18 pamphlet that:

- 19 (1) is approved by the department; and
 20 (2) describes:
 21 (A) the availability of debt management and credit
 22 counseling services; and
 23 (B) the borrower's rights and responsibilities in a motor
 24 vehicle title loan transaction.

25 Sec. 15. (a) The term of a motor vehicle title loan must be thirty
 26 (30) days.

27 (b) A borrower that renews a motor vehicle title loan shall make
 28 a payment of at least ten percent (10%) of the original principal of
 29 the motor vehicle title loan plus any interest authorized under this
 30 chapter. This subsection applies to the first and each subsequent
 31 renewal of a motor vehicle title loan by a borrower. The motor
 32 vehicle title lender shall defer payment a principal reduction
 33 payment required under this subsection but may not charge
 34 interest on the deferred amount. After the tenth renewal of a motor
 35 vehicle title loan, the balance on the motor vehicle title loan must
 36 be paid in full. However, the borrower and lender may agree to
 37 enter into a simple interest loan that is payable in installments not
 38 later than seven (7) days after the date the tenth renewal is due.
 39 Any such loan shall be subject to the provisions of IC 24-4.5-3.

40 Sec. 16. (a) A borrower shall provide a motor vehicle title lender
 41 with a signed statement that:

- 42 (1) the information provided by the borrower concerning the

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borrower's employment, income, and expenses is true and correct; and

(2) the borrower believes the borrower has the ability to repay the motor vehicle title loan.

The receipt of information provided under this subsection constitutes a motor vehicle title lender's good faith belief that a borrower has the ability to repay a motor vehicle title loan.

(b) A motor vehicle title lender may not make a motor vehicle title loan to a borrower unless the borrower presents a pledge.

(c) A borrower may prepay any amount on a motor vehicle title loan without charge at any time before the due date of the motor vehicle title loan.

(d) A motor vehicle title lender shall give a borrower that makes a partial or full payment on a motor vehicle title loan a signed and dated receipt showing the amount paid and the balance due on the motor vehicle title loan.

(e) A motor vehicle title lender shall provide to a borrower a copy of the required loan documents before disbursing loan proceeds.

(f) A borrower may rescind a motor vehicle title loan without cost to the borrower not later than the end of the motor vehicle title lender's third business day immediately following the day on which the motor vehicle title loan was made. To rescind a motor vehicle title loan, a borrower must:

(1) inform the motor vehicle title lender that the borrower wants to rescind the motor vehicle title loan; and

(2) return the original loan check or cash amount of the principal of the motor vehicle title loan to the motor vehicle title lender.

(g) A motor vehicle title lender may not sue a borrower for a deficiency balance unless the borrower commits fraud or wrongfully transfers interest in, damages, or hides the vehicle whose title secures the motor vehicle title loan.

(h) A motor vehicle title lender shall keep a record of the following information along with the loan agreement for a period of two (2) years from the date the title loan agreement was executed:

(1) A description of the pledged motor vehicle, including the:

(A) make;

(B) model; and

(C) vehicle number.

(2) The amount of the loan.

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(3) A record of all principal, interest, and fees collected.

(4) The name, date of birth, and copy of a government issued identification card of the borrower.

(5) The date the motor vehicle title loan was executed.

Sec. 17. A motor vehicle title loan may not be secured by personal property other than a motor vehicle with an unencumbered title.

Sec. 18. A motor vehicle title lender may not make a motor vehicle title loan in:

(1) an office;

(2) a suite;

(3) a room; or

(4) another place of business;

where a business other than making motor vehicle title loans is solicited or conducted unless the motor vehicle title lender obtains a written opinion from the director of the department that the other business is not contrary to the best interests of consumers, including borrowers.

Sec. 19. (a) An agreement with respect to a motor vehicle title loan may not provide for charges as a result of a default by the borrower, except where the borrower chooses to redeem a repossessed motor vehicle and must reimburse any repossession charges the motor vehicle title lender paid to a third party. A provision in violation of this section is unenforceable.

(b) If a borrower defaults on a motor vehicle title loan, the motor vehicle title lender shall mail a notice to cure default to the borrower's last known address before repossessing the borrower's motor vehicle not earlier than ten (10) days after the default. A notice under this subsection must state that the borrower has twenty (20) days after the date of the notice to cure the default.

(c) If a borrower does not cure a default within twenty (20) days after the date of the notice under this section, the motor vehicle title lender may repossess, in accordance with the applicable procedures set forth in IC 26-1-9.1, the borrower's motor vehicle that is pledged for the motor vehicle title loan.

(d) A motor vehicle title lender may not charge a borrower any interest or fees after the motor vehicle title lender repossesses the borrower's motor vehicle.

(e) After repossessing a borrower's motor vehicle, a motor vehicle title lender shall mail a notice of right to redeem to the borrower. A notice under this subsection must state that the borrower may redeem the title to the motor vehicle by paying all

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1 outstanding principal and interest authorized under this chapter,
 2 plus all repossession charges owed or paid by the motor vehicle
 3 title lender to third parties, within twenty (20) days after the date
 4 of the notice.

5 (f) A borrower that fails to redeem a motor vehicle's title under
 6 subsection (e) forfeits all rights, title, and interest in the motor
 7 vehicle. Upon forfeiture under this subsection, a motor vehicle title
 8 lender may dispose of the motor vehicle in a commercially
 9 reasonable manner. If the motor vehicle title lender sells the motor
 10 vehicle, the motor vehicle title lender shall apply the proceeds of
 11 the sale to any principal, interest, and charges, including
 12 repossession and sale costs, authorized under this chapter and
 13 owed by the borrower to the motor vehicle title lender. The motor
 14 vehicle title lender shall remit any surplus from the sale of the
 15 motor vehicle to the borrower in the manner determined by the
 16 department.

17 Sec. 20. (a) This section applies to licensed and unlicensed
 18 persons.

19 (b) A motor vehicle title lender who willfully violates this
 20 chapter:

- 21 (1) may be subject to a civil penalty not to exceed two
- 22 thousand dollars (\$2,000);
- 23 (2) may be subject to the remedies provided in
- 24 IC 24-4.5-5-202;
- 25 (3) may be subject to the penalties under IC 24-5-0.5;
- 26 (4) may not collect, receive, or retain any principal, interest,
- 27 or other charges from a motor vehicle title loan; and
- 28 (5) may be liable to a borrower for actual damages, statutory
- 29 damages of two thousand dollars (\$2,000) for each violation
- 30 of this chapter, costs, and attorney's fees.

31 However, subdivisions (4) and (5) do not apply if the motor vehicle
 32 title lender violates this chapter due to an accident or a bona fide
 33 computation error.

34 (c) The department may sue a motor vehicle title lender:

- 35 (1) to enjoin any conduct that violates this chapter; or
- 36 (2) for equitable relief.

37 (d) A borrower may pursue remedies in addition to the remedies
 38 described in this section. A borrower is not required to exhaust
 39 administrative remedies before pursuing a remedy under this
 40 section.

41 Sec. 21. A motor vehicle title lender may not do the following:

- 42 (1) Use or threaten to use criminal process to collect a motor

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vehicle title loan.

(2) Threaten to take an action prohibited by this chapter against a borrower.

(3) Make a misleading or deceptive statement regarding a motor vehicle title loan or a consequence of taking a motor vehicle title loan.

(4) Contract for or collect attorney's fees on motor vehicle title loans made under this chapter.

(5) Use a method or an agreement that the department determines would have the effect of charging or collecting fees, charges, or interest in excess of the amount allowed by this chapter. A method or an agreement under this subdivision includes the following:

(A) Entering into a transaction, other than a transaction authorized under this chapter, with a borrower, including the following:

(i) A transaction in which a borrower receives a purported cash rebate advanced by a person offering a product or service, including Internet content services, but the purported cash rebate does not represent a discount or an adjustment of the purchase price for the product or service.

(ii) A transaction designed to evade the applicability of this chapter.

(B) Entering into a sales-leaseback arrangement.

(C) Catalog sales.

(6) Engage in unfair, deceptive, or fraudulent practices in making or collecting a motor vehicle title loan.

(7) Charge to cash a check representing the proceeds of a motor vehicle title loan.

(8) Include any of the following provisions in a motor vehicle title loan document:

(A) A hold harmless clause.

(B) A confession of judgment clause.

(C) An unenforceable mandatory arbitration clause.

(D) An assignment or an order for payment of wages or other compensation for services.

(E) A provision in which the borrower agrees not to assert a claim or defense arising from a contract.

(F) A waiver of any provision of this chapter.

(9) Sell insurance of any kind in connection with the making or collecting of a motor vehicle title loan.

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1 (10) Require or accept from a consumer a set of keys to the
2 motor vehicle the title of which secures the title loan.

3 Sec. 22. A finance charge made under this chapter is exempt
4 from IC 24-4.5-3-508 and IC 35-45-7.

5 Sec. 23. The following statement must appear on each motor
6 vehicle title loan agreement:

7 "The borrower represents and warrants, to the best of the
8 borrower's knowledge, that the pledged motor vehicle is not
9 stolen and has no liens or encumbrances against it. The
10 borrower has the right to enter into this transaction. The
11 borrower will not apply for a duplicate certificate of title for
12 the pledged motor vehicle while this motor vehicle title loan
13 agreement is in effect."

14 Sec. 24. (a) A motor vehicle title lender shall post a bond to the
15 department in the amount of fifty thousand dollars (\$50,000) for
16 each location at which the motor vehicle title lender makes motor
17 vehicle title loans. However, the maximum bond posted by a motor
18 vehicle title lender under this subsection is five hundred thousand
19 dollars (\$500,000).

20 (b) A bond posted under subsection (a) continues in effect for
21 two (2) years after the motor vehicle title lender ceases operating
22 in Indiana. The bond must be available during the period to pay
23 damages and penalties to a consumer harmed by a violation of this
24 chapter by the motor vehicle title lender that posted the bond.

25 Sec. 25. The department may adopt rules under IC 4-22-2 to
26 carry out the purposes of this chapter.

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SENATE MOTION

Madam President: I move that Senator Nugent be removed as author of Senate Bill 383 and that Senator Steele be substituted therefor.

NUGENT

SENATE MOTION

Madam President: I move that Senator Nugent be added as second author of Senate Bill 383.

STEELE

SENATE MOTION

Madam President: I move that Senators Lewis and Mrvan be added as coauthors of Senate Bill 383.

STEELE

COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 383, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 15, delete "IC 24-4.5-3-502." and insert **"IC 24-4.5-3-502, other than an employee of a lender acting within the scope of the employee's duties for the lender."**

Page 2, between lines 7 and 8, begin a new paragraph and insert:

"(c) This chapter does not apply to:

- (1) any supervised financial institution;**
- (2) any supervised lender licensed to do business in the state;**
- or**
- (3) the employee of a supervised financial institution or a supervised lender while acting within the scope of the employee's duties."**



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Page 2, between lines 15 and 16, begin a new paragraph and insert:
"Sec. 5. As used in this chapter, "motor vehicle" has the meaning set forth in IC 9-13-2-105(a). However, the term does not include a recreational vehicle (as defined in IC 9-13-2-150(a)) or a watercraft (as defined in IC 9-13-2-198.5)."

Page 2, line 16, delete "5." and insert "6."

Page 2, line 17, delete "pledge." and insert **"pledge secured by the bailment of a motor vehicle title left in possession of the lender."**

Page 2, line 18, delete "6." and insert "7."

Page 2, line 19, after "secured by" insert **"the bailment of"**.

Page 2, line 21, delete "7." and insert "8."

Page 2, line 25, delete "8." and insert "9."

Page 2, line 28, delete "9." and insert **"10."**

Page 2, line 28, delete ":".

Page 2, line 29, delete "(1)".

Page 2, line 29, delete "; and" and insert ".".

Page 2, run in lines 28 through 29.

Page 2, delete lines 30 through 34.

Page 2, between line 34 and 35, begin a new paragraph and insert:

"Sec. 11. As used in this chapter, "unencumbered certificate of title" means a motor vehicle title that does not list a lienholder on the certificate of title and for which the lender holding the motor vehicle title has not applied for and does not intend to apply for a new certificate of title in order to record the lender's security interest."

Page 2, line 35, delete "10." and insert **"12."**

Page 2, line 39, delete "11" and insert **"13"**.

Page 2, line 40, delete "11." and insert **"13."**

Page 3, line 2, delete "12." and insert **"14."**

Page 3, line 3, delete "Truth in" and insert **"Consumer Credit Protection Act."**

Page 3, delete line 4.

Page 3, line 36, after "WRITING." begin a new line block indented and insert:

"MOTOR VEHICLE TITLE LOANS ARE REGULATED BY THE STATE OF INDIANA DEPARTMENT OF FINANCIAL INSTITUTIONS."

Page 4, line 7, delete "13." and insert **"15."**

Page 4, line 7, delete "at".

Page 4, line 8, delete "least".

Page 4, line 14, delete "may" and insert **"shall"**.

Page 4, line 14, delete "of some or all of".

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Page 4, line 14, after "of a" insert "**principal reduction**".

Page 4, line 16, after "amount." insert "**After the tenth renewal of a motor vehicle title loan, the balance on the motor vehicle title loan must be paid in full. However, the borrower and lender may agree to enter into a simple interest loan that is payable in installments not later than seven (7) days after the date the tenth renewal is due.**".

Page 4, line 17, delete "14." and insert "**16.**".

Page 5, line 4, after "return the" insert "**original loan check or**".

Page 5, between lines 9 and 10, begin a new paragraph and insert:

"(h) A motor vehicle title lender shall keep a record of the following information along with the loan agreement for a period of two (2) years from the date the title loan agreement was executed:

(1) A description of the pledged motor vehicle, including the:

(A) make;

(B) model; and

(C) vehicle number.

(2) The amount of the loan.

(3) A record of all principal, interest, and fees collected.

(4) The name, date of birth, and copy of a government issued identification card of the borrower.

(5) The date the motor vehicle title loan was executed."

Page 5, line 10, delete "15." and insert "**17.**".

Page 5, line 13, delete "16." and insert "**18.**".

Page 5, line 13, delete "(a) This section does not apply to a person that is".

Page 5, delete lines 14 through 15.

Page 5, line 16, delete "(b)".

Page 5, run in lines 13 through 16.

Page 5, line 27, delete "17." and insert "**19.**".

Page 5, line 29, delete "borrower other than charges authorized by this chapter." and insert "**borrower, except where the borrower chooses to redeem a repossessed motor vehicle and must reimburse any repossession charges the motor vehicle title lender paid to a third party.**".

Page 5, line 32, delete "the".

Page 5, line 33, delete "borrower at".

Page 5, line 34, delete "vehicle." and insert "**vehicle not earlier than ten (10) days after the default.**".

Page 5, line 35, delete "ten (10)" and insert "**twenty (20)**".

Page 5, line 37, delete "ten (10)" and insert "**twenty (20)**".

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Page 6, line 9, delete "ten (10)" and insert "**twenty (20)**".

Page 6, line 23, delete "18." and insert "**20.**".

Page 7, line 5, delete "19." and insert "**21.**".

Page 7, line 41, delete "enforceable" and insert "**unenforceable**".

Page 8, between lines 6 and 7, begin a new line block indented and insert:

"(10) Require or accept from a consumer a set of keys to the motor vehicle the title of which secures the title loan."

Page 8, line 7, delete "20." and insert "**22.**".

Page 8, line 9, delete "21." and insert "**23.**".

Page 8, line 18, delete "22." and insert "**24.**".

Page 8, line 29, delete "23." and insert "**25.**".

Page 8, delete lines 31 through 42.

Delete pages 9 through 11.

Renumber SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 383 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 9, Nays 2.

SENATE MOTION

Madam President: I move that Senate Bill 383 be amended to read as follows:

Page 4, line 38, after "due." insert "**Any such loan shall be subject to the provisions of IC 24-4.5-3.**".

Page 5, line 21, after "lender's" insert "**third**".

(Reference is to SB 383 as printed January 25, 2006.)

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